Supreme Court, U.S.
FILED

No. _____

98-2013 JUN 16 1999
OFFICE OF THE CLERK

In The
Supreme Court of the United States

THEODORE KAMASINSKI,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petition for Writ of Certiorari

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28 pp

QUESTION PRESENTED FOR REVIEW

Does a private citizen seeking to perform a watchdog role over the functioning of the legal system have the same Article III standing as a professional journalist would have to assert constitutional and common-law claims of access to judicial proceedings and records?

LIST OF PARTIES

All parties appear in the caption of the case and no parent corporations or subsidiaries exist in this litigation.

CORPORATE DISCLOSURE

There are no corporate parties to this appeal.

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OPINIONS BELOW

The Opinion of the United States Court of Appeals for the First Circuit is styled *Robert McMinn, Appellee v. United States, Appellee, Theodore Kamasinski, Appellant.* The opinion has not been reported; it is included in the Appendix ("App."). The appeal was taken from an order of a district court in an underlying proceeding under 28 U.S.C. § 2255 styled *McMinn v. United States*, No.98-16 (D.N.H. 1998), which is also not reported. It too is included in the Appendix.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals for the First Circuit was entered on March 19, 1999. This Petition for a Writ of Certiorari is filed within 90 days of that date and the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

The First Amendment to the Constitution of the United States:

> "Congress shall make no law . . . abridging the freedom of speech . . ."

STATEMENT OF THE CASE

A. Introduction

Theodore Kamasinski is a private citizen dedicated to the mission of observing and reporting on the American legal system. He has, for many years on a regular and ongoing basis, filed legal actions in a wide variety of state and federal courts, bar associations, and administrative agencies, challenging secrecy provisions, seeking to unseal records, and pursuing other forms of relief that are calculated, in his view, to exposing unethical behavior and corruption in the legal system.[1]

In the proceedings below Kamasinski sought to unseal the transcript of a hearing conducted in the United States District Court for the District of New Hampshire in *McMinn v. United States*, a habeas proceeding under 28 U.S.C. § 2255, in which the district court had disqualified a criminal defendant's court-appointed counsel on grounds of conflict of interest. Kamasinski asserted that government prosecutors had engaged in misconduct by fabricating the conflict of interest in order to effectuate the disqualification of defense counsel. The district court denied Kamasinski's motion to intervene and unseal the record, stating that it would "place certain individuals at risk." App. 3. On

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[1] *See, e.g., Kamasinski v. Judicial Review Council*, 44 F.3d 106 (2d Cir. 1994) (Petitioner brought First Amendment challenge to confidentiality requirements in Connecticut surrounding ethics complaints against judges filed with the state's Judicial Review Council; Petitioner was successful in getting district court to strike down certain portions of the law, after which reform measures were passed in the Connecticut legislature.). *See also Kamasinski v. Judicial Review Council*, 797 F.Supp. 1083 (D.Conn.1992) (striking down portions of the Connecticut law); *Kamasinski v. Judicial Review Council*, 843 F.Supp. 811 (D.Conn.1994) (sustaining remaining provisions of the Connecticut law).

appeal the United States Court of Appeals for the First Circuit did not reach the merits of Kamasinski's motion to unseal, instead holding that the First Amendment right of access to judicial proceedings was not a "personal right" and that Kamasinski thus lacked Article III standing to pursue his effort to have the transcript unsealed.

B. The Profound Implications of the Court of Appeals' Ruling

This Petition raises the fundamental constitutional question of whether a private citizen exercising a self-appointed "watchdog" role has the same rights of access to judicial proceedings and documents as members of the institutional press. The issue posed is whether a private citizen performing such a watchdog function who seeks to intervene in a judicial proceeding for the purpose of seeking to unseal records has standing under Article III of the Constitution to seek access to those records.

The merits of the district court's order refusing to unseal the hearing transcript at issue is not before this Court. The court of appeals pretermitted any review of the merits by ruling, at the threshold, that "[t]he First Amendment right of access is not a personal right." App. 2. It followed, the court reasoned, that "Kamasinski lacks Article III standing." Relying on this Court's ruling in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), the court of appeals held that to establish standing, a party must have suffered a "concrete and particularized injury." App. 2. Theodore Kamasinski's lifelong mission of observing, exposing, and commenting upon the workings of the legal system did not, in the court's view, give him the kind of personalized stake required by Article III:

> The interest Kamasinski asserts in the attorney disqualification hearing--keeping a watchful eye on the workings of the

> prosecution and court--is an interest shared by every member of the public. Kamasinski's vague suspicions of misconduct in the instant case do not alter the analysis in the absence of a showing of a cognizable, individualized harm.

App. 2.

The decision of the court of appeals can be interpreted in two ways. Either interpretation is profoundly disturbing, and deserves review in this Court.

On the one hand, the court of appeals' ruling may mean that *no* outsider to a judicial proceeding who lacks a direct, individualized stake in the outcome will have Article III standing to enforce rights of access to such proceedings and records. If this is the meaning of the court of appeals' decision, its reasoning would apply not just to Theodore Kamasinski but to *The Boston Globe* or The Associated Press or CNN or the American Civil Liberties Union. Precisely because this Court has so often articulated First Amendment rights of access as public rights enjoyed by everyone, they would be rendered chimerical rights enforceable by no one.

On the other hand, it is possible that court of appeals decision should be interpreted as intended to draw a distinction between the standing of professional journalists and established news organizations and public interest groups to seek access to sealed proceedings and records, and the standing of "mere" private citizens such as Theodore Kamasinski. That this may have been the court of appeals' intent is suggested by a passage in the court's opinion stating:

> Rather the First Amendment protects the rights "of the public" and press to attend criminal proceedings. *Richmond Newspapers,*

> *Inc. v. Virginia*, 448 U.S. 555, 580 (1980). A threshold question is whether Kamasinski has Article III standing to be a proponent of the general public's right.

App. 2. Since this passage seems to at least tacitly acknowledge that a newspaper such as *The Richmond Times-Dispatch* would have "standing to be a proponent of the general public's right" recognized in *Richmond Newspapers*, the court of appeals' ruling very well may have been intended to relegate citizens such as Theodore Kamasinski to second-class status in the enjoyment of that right.

The cryptic dispatch with which the court of appeals disposed of Kamasinski's claim makes it difficult to determine whether the court intended to use the law of standing to effectively wipe out for *everyone* the rights of access recognized by *Richmond Newspapers* and its progeny, or instead intended to create a constitutional cleavage between the institutional press and ordinary private citizens in the enforcement of those First Amendment rights. Either way, the ruling should not be allowed to stand.

Theodore Kamasinski is not a famous journalist or a powerful news organization. But neither the standing requirements of Article III nor the substantive principles embodied in the First Amendment require that he carry press credentials to seek vindication of constitutional rights of access. The holding of the court of appeals stands at the confluence of Article III and the First Amendment, an area that has not been much explored in the prior rulings of this Court. The ramifications of the court's decision are far-reaching and alarming, running contrary to the common sense of this Court's standing jurisprudence, and doing violence to the egalitarian norms that animate our First Amendment tradition.

REASONS FOR GRANTING THE WRIT

I. THE FIRST AMENDMENT RIGHTS OF ACCESS TO JUDICIAL PROCEEDINGS AND RECORDS RECOGNIZED IN THE PRIOR RULINGS OF THIS COURT ARE ENJOYED EQUALLY BY PRIVATE CITIZENS AND PROFESSIONAL JOURNALISTS.

In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), this Court recognized a First Amendment right of access to judicial proceedings. Similarly, in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978), this Court recognized a common-law right of access to inspect and copy public records and documents. These access cases, and subsequent decisions that have elaborated on these access rights, were brought by litigants who were members of the institutional media, were *not* parties to the underlying criminal, civil, or administrative proceedings, and who had *no* injury emanating from the attempt to deny them access *other than* the deprivation of information germane to the conduct of governmental institutions and processes. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (*Press Enterprise II*).

In none of these decisions did this Court ever hint that the news organizations seeking access to proceedings and records lacked Article III *standing* to pursue their claims. In none of these decisions did this Court ever hint that the news organizations had substantive rights of access *superior* to those of the general public. To the contrary, the consistent position of this Court has been to eschew the creation of preferred and secondary holders of First Amendment rights, instead treating media and nonmedia speakers in parity in their enjoyment of First Amendment

freedoms. This door has swung both ways. Thus this Court has routinely struck down laws that single out the institutional press for disfavorable treatment. *See, e.g., Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241 (1974); *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 101-102 (1979); *The Florida Star v. B.J.F.*, 491 U.S. 524, 540-41 (1989); *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 229 (1987); *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585 (1983). Yet it has also generally refused to grant the media First Amendment protections above those enjoyed by the public generally, including rights of access superior to those of the broader public. *See, e.g., Pell v. Procunier*, 417 U.S. 817 (1974) (refusing to recognize a right of access to prisons and jails over and above the rights those institutions afforded to members of the general public); *Saxbe v. Washington Post Co.*, 417 U.S. 843 (1974) (same); *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978) (same).

These egalitarian First Amendment values have been applied with particular force in the specific context of access to judicial proceedings and public records, in which this Court has always been painstakingly careful to articulate the rights being recognized as rights of the press *and* public alike. Indeed, the entire fibre and sinew of this Court's historic ruling in *Richmond Newspapers* was the recognition of the vital role that *public* access to criminal proceedings plays in the democratic life of the community. *See Richmond Newspapers*, 448 U.S. at 570-71 ("The early history of open trials in part reflects the widespread acknowledgment, long before there were behavioral scientists, that public trials had significant community therapeutic value. Even without such experts to frame the concept in words, people sensed from experience and observation that, especially in the administration of criminal justice, the means used to achieve justice must have the support derived from public acceptance of both the process and its results."). *See also Press Enterprise II*, 478 U.S. at 8

("In cases dealing with the claim of a First Amendment right of access to criminal proceedings, our decisions have emphasized two complementary considerations. First, because, a "'tradition of accessibility implies the favorable judgment of experiences'" we have considered whether the place and process have historically been open to the *press and general public*.") (emphasis supplied) (internal citations omitted).

This Court has wisely eschewed any gerrymander of the First Amendment that would divide media and nonmedia speakers. For "[t]he liberty of the press is not confined to newspapers and periodicals." *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938). Rather, it includes the street-box orator and sidewalk pamphleteer, *id.* at 452, the lonely canvasser treading door-to-door, *Tucker v. Texas*, 326 U.S. 517 (1946); and the modern cyberspace one-person publisher sending and receiving information world-wide from a home computer terminal on the Internet. *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997). The First Amendment shelters "the right of the lonely pamphleteer who uses carbon paper or a mimeograph as much as of the large metropolitan publisher who utilizes the latest photocomposition methods." *Branzburg v. Hayes*, 408 U.S. 665, 704 (1972). Theodore Kamasinski is not *The New York Times* or *The Washington Post* seeking to unearth the secrets of Vietnam in *The Pentagon Papers*. *See New York Times Co. v. United States*, 403 U.S. 713 (1971). He is a rather a self-described "citizen in good standing" with a passionate commitment to gathering and disseminating information about the American legal system. There is no question that the *subject matter* of the information he seeks to acquire and disseminate, information about the operation of the judicial process, is at the very core of the First Amendment's protections. *See, e.g., Bridges v. California*, 314 U.S. 252 (1941); *Pennekamp v. Florida*, 328 U.S. 331 (1946); *Craig v. Harney*, 331 U.S. 367 (1947); *Schware v. Board of Examiners of the State of New Mexico*, 353 U.S.

232 (1957); *Wood v. Georgia*, 370 U.S. 375 (1962); *Nebraska Press Ass'n. v. Stuart*, 427 U.S. 539 (1976); *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (*Press Enterprise II*); *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984); *Butterworth v. Smith*, 494 U.S. 624, 632 (1990).

The only question is whether Theodore Kamasinski partakes fully in these rights, whatever their ultimate contours may prove to be. That Kamasinski may be obscure and powerless relative to the major media organizations that more routinely press for rights of access in this Court does not diminish the force of his claims. To the contrary, this Court has a great tradition of granting review in cases involving dedicated but unknown and isolated private citizens who passionately claim that the First Amendment was also meant for them. *See, e.g., City of Ladue v. Gilleo*, 512 U.S. 43 (1994) (sustaining the right of Margaret Gilleo to place a 24' by 36' sign on her front lawn protesting the Persian Gulf War); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995) (sustaining right of Margaret McIntyre to distribute anonymous leaflets opposing a proposed school tax levy).

There is but one First Amendment. The constitutional and common-law rights of access to judicial proceedings and records exist for as much for the average citizen as for the mainstream press.

II. THE COURT OF APPEALS FAILED TO PROPERLY APPLY ARTICLE III'S STANDING REQUIREMENTS TO THE CONTEXT OF FIRST AMENDMENT RIGHTS OF ACCESS.

If, as a matter of substantive First Amendment and common law, the rights of access enjoyed by citizens are seamless, applying with equal force to media and non-media information-seekers alike, the question then becomes whether the standing requirements of Article III impose a free-standing discrimination that would be otherwise offensive to the equality principles of the First Amendment. To put the issue simply, does Article III discriminate in favor of the media, in a manner that the First Amendment does not?

Under any sensible construction of the standing principles of Article III, surely the answer must be "no." There is no violation of Article III inherent in faithful adherence to the requirements of the Free Speech Clause. *Cf. Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819, 846 (1995) ("There is no Establishment Clause violation in the University's honoring its duties under the Free Speech Clause.").

It is true, of course, that this Court emphasized in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), that the Constitution requires a "concrete and particularized injury" in order for a litigant to have standing. It is also true that in so-called "taxpayer standing" cases, this Court has required a tighter logical nexus between the status asserted as the predicate for standing and the claim sought to be adjudicated. *See Flast v. Cohen*, 392 U.S. 83, 102 (1968); *United States v. Richardson*, 418 U.S. 166 (1974).

But it is also true that the mere fact that a right is widely shared does not mean that the right cannot also be widely enforceable. As this Court recently explained in *Federal Election Comm'n v. Akins*: "Often the fact that an

interest is abstract and the fact that it is widely shared go hand in hand. But their association is not invariable, and where a harm is concrete, though widely shared, the Court has found 'injury in fact'" 118 S.Ct. 1777, 1786 (1998). *See also Public Citizen v. Department of Justice*, 491 U.S. 440, 449-50 (1989) ("[T]he fact that other citizens or groups of citizens might make the same complaint after unsuccessfully demanding disclosure . . . does not lessen [their] asserted injury").

Contrary to the court of appeals' argument, a citizens' interest in acquiring information from government in order to maintain a watchful eye on its processes and expose perceived wrongdoing *is* a "personal right" and *is* sufficient *in itself* to meet the minimum requirements imposed by Article III. In "informational standing" cases, a citizen who seeks to enforce a recognized legal entitlement to information is deemed to posses sufficiently concrete injury for Article III purposes even though that injury may be widely shared. In this instance, Theodore Kamasinski claims his legal entitlement under the Constitutional doctrines emanating from *Richmond Newspapers* and the common-law entitlement recognized in *Nixon*. The right of access to judicial proceedings or public records for the purpose of information-gathering and dissemination will, by its very nature, rarely be accompanied by any palpable and unique propriety interest in the information sought. But this has never been understood as the essence of the right being enforced. As this Court explained in *Nixon v. Warner Communications, Inc.*:

> It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents. In contrast to the English practice . . . American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen's desire to keep a watchful eye on the workings of public agencies, . . .and in a newspaper publisher's intention to publish information concerning the operation of government.

Nixon, 435 U.S. at 597-98 (internal citations omitted).

And herein lies the reason why the First Circuit's brief and ostensibly insignificant decision is actually fraught with profound and pernicious potential. If Theodore Kamasinski's "private journalism" is not enough to confer standing, than neither is the more public journalism practices by the mainstream press. If Kamasinski lacks standing, so does everyone else. If Article III will not support the claims to access recognized in cases such as *Richmond Newspapers* or *Nixon v. Warner Communications*, then standing principles have silently but effectively overruled those decisions.

A professional journalist seeking information to disseminate to the public has no stronger or more particularized interest in obtaining that information than a citizen-watchdog. While it may be true that the journalist is "doing his or her job" and usually expects to be paid for gathering and disseminating the information, First Amendment rights have never been understood to rise or fall with the presence or absence of profit. *See, e.g., Virginia*

State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 761 (1976); *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 384-85 (1973); *New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964); *Smith v. California*, 361 U.S. 147, 150 (1959); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952).

The pluck and enterprise it takes to identify the information sought, to petition the keeper of the records for access, and to litigate in the face of its denial are sufficient to distinguish the information-seeker such as Theodore Kamasinski or a reporter for *The Boston Globe* from other members of the general public. The very process of seeking out and fighting for the information at stake guarantees a controversy that will be concrete rather than abstract; the denial of information required to exercise First Amendment freedoms guarantees that the claimant may convincingly assert injury-in-fact. Thus this Court has explicitly held that "informational standing" is consistent with Article III, and that the denial of information sought by journalists, public interest groups, or private citizens can constitute sufficiently concrete injury to support Article III standing. *Federal Election Comm'n v. Akins*, 118 S.Ct. at 1786, *Public Citizen v. Department of Justice*, 491 U.S. at 449, (failure to obtain information subject to disclosure under Federal Advisory Committee Act "constitutes a sufficiently distinct injury to provide standing to sue"); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-374 (1982) (deprivation of information about housing availability constitutes "specific injury" permitting standing).

Prior to the decision below the First Circuit has been generous in its construction of constitutional rights of access to judicial proceedings and records. *See, e.g.,, Globe Newspaper Publ'g Company v. Pokaski*, 868 F.2d 497 (1st Cir. 1989). Believing that under the First Circuit's precedents he had a First Amendment and common-law right of access to the records at issue, Theodore Kamasinski

sought intervention to challenge the sealing of a judicial record. Whether he did or did not have such a right is not the question Kamasinski seeks to place before this Court. What he seeks, rather, is this Court's review of a far more basic and important question: Does a private citizen seeking to perform a watchdog role over the functioning of the legal system have the same Article III standing as a professional journalist would have to assert consitutional and common-law claims of access to judicial proceedings and records?

This is a question of far-reaching significance for the administration of the American legal system and the efficacy of the rights of access that have been recognized by this Court as critical to the health of the democratic process and the vitality of the First Amendment.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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Judgment,
United States Court of Appeals
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Order,
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UNITED STATES COURT OF APPEALS
For the First Circuit

No. 98-1427

ROBERT MCMINN,

Petitioner, Appellee,

v.

UNITED STATES OF AMERICA,

Respondent, Appellee,

THEODORE KAMASINSKI,

Appellant.

Stahl, Circuit Judge,
Coffin, Senior Circuit Judge,
and Lipez, Circuit Judge.

JUDGMENT

Entered: March 19, 1999

Theodore Kamasinski has filed a notice of appeal from a district court order denying his motion to intervene and request to unseal in a 28 U.S.C. § 2255 proceeding, McMinn v. United States, No. 98-16 (D.N.H. filed 1/12/98). Kamasinski sought to intervene for the purpose of unsealing a transcript of an attorney disqualification hearing in Robert McMinn's underlying criminal case. The district court denied the motion to intervene on the ground that unsealing the transcript would place confidential informants at risk. Kamasinski challenges the refusal to unseal on the ground

that it violates the First Amendment right of access to criminal proceedings.[1] He makes no separately developed argument directed at the denial of his request to intervene.

The First Amendment right of access is not a personal right. See United States v. McVeigh, 106 F.3d 325, 335 (10th Cir. 1997) (per curiam) (holding that victim-witnesses had no personal First Amendment right to attend criminal prosecution). Rather the First Amendment protects the rights "of the public" and press to attend criminal proceedings. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580 (1980). A threshold question is whether Kamasinski has Article III standing to be a proponent of the general public's right. See Steel Co. v. Citizens for a Better Env't, 118 S. Ct. 1003 (1998) (holding that federal courts may not consider other issues before resolving Article III standing). If Kamasinski lacks standing, then we have no jurisdiction to reach the merits. See Sea Shore Corp. v. Sullivan, 158 F.3d 51, 54-55 (1st Cir. 1998); Libertad v. Welch, 53 F.3d 428, 436 (1st Cir. 1995).

We conclude that Kamasinski lacks Article III standing. To establish standing, a party must have suffered a "concrete and particularized" injury. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (elaborating on "injury-in-fact" requirement). The injury may be shared by many others, but may not be common to everyone. Dubois v. United States Dep't of Agric., 102 F.3d 1273, 1281 (1st Cir. 1996) (citations omitted). The interest Kamasinski asserts in the attorney disqualification hearing--keeping a watchful eye on the workings of the prosecution and court--is an interest shared by every member of the public. Kamasinski's vague suspicions of misconduct in the instant case do not alter the analysis in the absence of a showing of a cognizable, individualized harm. Cf. McVeigh, 106 F.3d at 336 n.10

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[1] In the district court, Kamasinski also asserted a common law of right of access to the sealed materials. However, he has waived any argument along these lines for failure to make a developed argument in his brief.

(suggesting those charged with causing their injury could show particularized harm and, thus, would have standing to bring a First Amendment right of access claim).

For the foregoing reasons, we dismiss the appeal for lack of jurisdiction. See Loc. R. 27.1

By the Court:

Clerk.

By /s/ Janice O'Neil
Chief Deputy Clerk.

[Cert. Hon. Joseph A. DiClerico and James R. Starr, Clerk, U.S.D.C. of New Hampshire and cc: Messrs: Kamasinski, Papps and McMinn]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Robert McMinn

v. Civil No. 98-16-JD

United States of America

ORDER

Entered: February 18, 1998

The petitioner has requested that the transcript of a proceeding held in Chambers on August 3, 1995, in United States v. Robert McMinn, Criminal No. 95-01-01-JD, concerning the conflict of interest on the part of his attorney, Bjorn Lange, be unsealed.

The motion is denied. During the sentencing of the petitioner the court found him to be a dangerous person. For this reason it would be inappropriate to unseal the transcript and place certain individuals at risk. The petitioner does not need access to the transcript in order to prosecute his § 2255 petition. Attorney Lange and petitioner's subsequent counsel were both appointed counsel since the petitioner was indigent. While the petitioner was entitled to appointed counsel, he did not waive the right to counsel of his choice. When a serious conflict of interest concerning Mr. Lange's continued representation of the petitioner was brought to the court's attention, the court was under an obligation to Mr. Lange and the petitioner to remove Mr. Lange as petitioner's counsel and to appoint new counsel for him. The petitioner's new counsel was afforded ample opportunity to prepare his cases for trial. The petitioner did not experience any interference with his Sixth Amendment right as a result of the change in his counsel.

SO ORDERED.

/s/ Joseph A. DiClerico, Jr.
Jospeph A. DiClerico, Jr.
District Judge

February 18, 1998

cc: Robert McMinn, pro se
Peter B. Krupp, Esquire
U.S. Attorney